

expenses. If we have a health insurance system that doesn't cover 50 percent or, in some cases, more than 50 percent of the actual costs most people consume in health care expenditures, what kind of health care system is it, as far as insurance is concerned? It is not a very good one.

Again, some Republicans are saying, well, we should be doing what the market is doing. Well, what the market did was cover drug costs. For us not to do that—I think it is a little disingenuous to make the argument that we should not take on this liability. I agree we need to have reforms and control costs, but we need to take on this responsibility because it is part and parcel of good quality health care in America today.

The PRESIDING OFFICER. All time has expired.

Mr. SANTORUM. I thank the Chair.

### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

The majority leader is recognized.

Mr. FRIST. Mr. President, first, I very much appreciate our colleagues talking on two very important issues this morning in morning business. In a very productive way, it highlights the issues that we will continue to debate and discuss over the next several days.

As I mentioned earlier this morning, the plans are to address the issues of the Energy bill, as well as the Medicare bill, as well as the appropriations bills, over the next several days and bring them to the floor as soon as possible, as soon as they are ready, so we can proceed with this debate in an orderly fashion.

As I mentioned earlier this morning, the plans will be to work through this week and through the weekend and, hopefully, that will be it. Possibly, we might go into the early part of next week.

### ENERGY POLICY ACT OF 2003— CONFERENCE REPORT

Mr. FRIST. Mr. President, at this point, I move to proceed to the conference report to accompany H.R. 6, the Energy Policy Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6), to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same, with an amendment, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

(The text of the conference report is printed in the proceedings of the House in the RECORD of November 17, 2003.)

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I want to first say to the Senate, a little over a year ago the Senate changed committees and I had the luxury of moving from the Budget Committee to the Energy Committee—perhaps not a luxury in everyone's sense but from my standpoint it was, indeed, a great opportunity and a tremendous change for me. I took that opportunity with a great deal of relish and enthusiasm and decided I would do the very best I could to produce an energy policy, broad based, for this country.

The House agreed on that conference report yesterday by an overwhelming vote. That means that one body has looked at that conference report and, with bipartisan support, said this is a good policy for the United States to follow in the future, and it will do good things for our people and for our growth and development.

The United States of America spends annually \$440 billion, roughly—and that is on the low side—on energy. That energy is the underpinning of our economy and is a principal component of our quality of life. For most Americans, the complex system of energy production and distribution is something they take for granted. When they turn on the lights every morning, they give absolutely no thought to the turbines powered by coal, gas, oil, hydro-power, or nuclear power spinning around to produce that electricity. Only during hurricanes or blackouts are they reminded of how complex the system of transmission lines is that brings that power to their homes and to their businesses sometimes across many States.

Americans almost never give a thought to the fact that beyond the complex physical system that produces and generates our energy is a massively complex system of rules and regulations. These rules and regulations govern, one, who pays for power and who pays for the powerplants and transmission lines; two, how the emission from the plants is regulated; three, who can own them; four, how the fuels can be shipped; and five, what costs can be charged and to whom.

Some of my colleagues are critical of this legislation. Who would not expect that to be? This bill is put together by the House and the Senate, each with different ideas about what they think

is the best way to solve our problems, if we can. Clearly, each body has strong feelings about certain issues that they match up when we attempt to move ahead in some positive direction.

Some will get up here in the next couple of days and argue about some of the provisions in this bill. I say right now to the Senate and to the American people, some of the provisions that will be argued I agree with. Some of the provisions I don't agree with; that is, some that people suggest should be changed in this bill. But I remind everyone that we didn't get to this point without giving and taking, without putting and taking back, without arguing one way and then not winning it and having to go the other way. I suggest that everybody in this body knows—and if they don't right now, they will soon—that across this land there are millions of farmers, who farm all kinds of products, who are either up here on the Hill or on the telephones talking about passing this bill because it has a giant provision to convert corn and related products of our country over time to ethanol which will, in turn, be used in our automobiles in lieu of gasoline that comes from crude oil.

We in the Senate, I say to my good friend, were led in those negotiations for ethanol by the distinguished Senator from Iowa, Mr. GRASSLEY. He has been a staunch advocate, along with the minority leader, Senator DASCHLE, for a major American ethanol program. I can tell my colleagues that in negotiating with the House, they weren't as excited about the program, the project, or the size as we were under the leadership of Senator GRASSLEY. So to get what we wanted, we had to ask them what they wanted. They didn't wait around for us to ask. That is sort of a way of saying it. They told us what they needed. In other words, they said: You want that, we want something.

I will tell my colleagues shortly of the numerous provisions they wanted that are in this bill that brought us forth today with the most significant program for farmers and the production of ethanol to take the place of crude oil that we have ever had in this country.

Let me proceed with my original thoughts and then move over to the subject matter which has brought a number of people into a state of opposition to this bill. Let me complete a few thoughts.

The Congressional Budget Office estimates that this bill will cost \$26 billion over 10 years. Some people have much bigger numbers, but what they are talking about in those numbers is not where we have obligated the expenditure of funds. They are authorized. They are to be funded, if ever, later. They are statements of policy, but not statements of policy accompanied by programs that must be paid for.

What I am talking about is \$26 billion that has to do with the taxes that are included in this bill. That averages \$2.6 billion a year. People can talk about

how much we are spending and who we are giving it to, and I remind them one more time, America at work, day by day, spends about \$440 billion annually on electricity. We, who were charged in our committee with making things better for the future, said let's have some production tax credits and the like to bring on more energy and cause more alternatives. If we took that number of \$2.6 billion per year on average, and then figure that up against \$440 billion a year, it would seem to me that some might say: You didn't do enough; you can't move this system with that little tiny bit of money.

I will, before we are finished, calculate this over 10 years. I will take \$440 billion times 10 and then the little bit we are spending, and the number will then be such a tiny number that people will wonder whether we can really get much done. I think we can.

In exchange for that investment of about one-half of 1 percent, in summary, for there is time to go into detail, we will diversify our resources of electricity to build new, clean coal-burning powerplants, solar facilities, relicense our hydropower, and build new geothermal plants and, yes, perhaps build some nuclear powerplants.

For the same one-half of 1 percent, we will impose mandatory reliability standards on our transmission systems to ensure that blackouts, such as the one in August, will not occur again.

This legislation will also streamline the permitting process for oil and gas production on Federal lands. I want to be clear that this legislation does not change the standards. We are not reducing the requirements to produce energy on Federal properties, but we require Federal agencies to coordinate so that the regulatory process is more straightforward. I would think anybody would expect that of us in these days when we have shortages and when we have resources of our own.

This bill did not shy away from controversy. Some of the most difficult issues we faced were the regional differences on how to regulate electricity generation and transmission. This Nation is divided on the issue. If they are not divided, it is because they don't know the issue. But if they knew the issue, they would be divided, and that is unavoidable.

As I have said before, if I could have written four different laws, cutting our country into four pieces, we could have provided each region of the country its own set of laws. But we cannot do that.

There is one America, not four. We were asked to write a reform of the Federal Power Act for the whole country. So without the luxury of doing it in pieces, we think we have achieved a fair middle ground.

In exchange for compromise, all market participants can now conduct their business understanding what rules and regulations will be applicable. I believe that certainty will allow new capital to enter the electricity transmission business and encourage new construction

and thereby create a more reliable transmission grid.

In some cases, I wish we could have done more. I think it is known that I support the opening of ANWR. I wish we could have had it in here, but we know the bill could not have passed with it. In addition, I wish we could have inventoried the resources of the Outer Continental Shelf, just to know what we own, but the House would not hear of that either. However, to the extent possible, the conference report avoids those two issues and issues of that type.

There are some issues this conference report contains that concern my colleagues, and I have heard much about them already. I want to take a visit to one of those.

First, there is an issue that is called MTBE. Those provisions were not in the Senate bill but the House was adamant about the provision. Similarly, the House insisted on an amendment called the bump-up provision. They made a case and then they voted again on that case on the floor of the House and repeated their support of it overwhelmingly. In due course, if we want a discussion of it, we can have it.

While these provisions are controversial, I am convinced the policy behind them is sound, and I will discuss them in detail as we debate each provision.

This bill is not just about producing energy. To the extent we can, we try to save energy. Some wish we could have done something more radical, such as imposing very high CAFE standards for automobiles. That continues to come up when we are asked how much gasoline are we going to save and how much oil will we import, how much will that be reduced.

I say, we will do whatever the Senate and/or the House would vote for, and everybody knows they will not vote for changes in the existing law with reference to automobiles. That is not a question of copping out, it is a question of taking the vote and finding there are not the votes.

So for those who would like to say we should have done something in that area, I think it is fair to say they either know something none of us knows about—they have a secret weapon to get the votes—or they are just making a statement to make this effort look less effective.

We know neither the House nor the Senate has the will to modify the CAFE standards to any significant degree. We have done everything else we could do short of that. I am a pragmatist, but I believe this bill will indicate we will go only so far and then we have to draw a line and say that is as far as we will go.

We did what was politically feasible. We increase efficiency standards for appliances, Federal buildings, and we provide tax incentives to use fuel-efficient cars and to build energy-efficient buildings. Many of these are not new and have been espoused by others before me as part of an energy program,

including many of them by Senator BINGAMAN heretofore.

This bill is an investment. It will pay off in affordable, reliable energy that will underpin our economy. It will pay through savings we are going to enjoy from increased energy efficiency, and this bill is one-half of 1 percent investment in our economy and our future. I think it is worth it. There is no doubt in my mind that if we do this, the country will be much safer, much better off in the years to come. After all, if one takes on a job such as this, they can end up saying they at least have done that. Much more cannot be asked for.

I wish to comment on MTBE. MTBE was a product authorized by the United States of America years ago to be used in the process of oxidation in this country. It was an acceptable product to be used in a regulated manner. Many companies did that. Some companies did not use it correctly and may have violated rules, may have been negligent, may have thrown it around, may have spilled it where it should not be, but the House had in mind—and we had no alternative but to agree in order to get the rest of this bill—that for those companies that produced a valid, legal product and used it validly and legally, they should not be liable if there are damages that are forthcoming.

I might say to the Chair and all Senators, the same thing is going to apply to ethanol.

Now, going back to MTBE, it is a prescribed product. The U.S. Government prescribed it and authorized it. This bill says if it is used improperly, the companies are liable. If it is used properly, this says lawsuits do not lie for damages.

I have heard many Senators come to the floor and abhor lawsuits that seek damages from companies for products they produced that were legal and valid but some damage occurred to somebody through no fault of the product, of the production of the product or its proper use. I have heard Senators on my side of the aisle say it is time we stop those kinds of suits; those are lawyers just trying to attack, sue, and gain big settlements. In this case, we decided that for using the product improperly, lawsuits can maintain; for using it properly, lawsuits cannot be maintained.

I am very sorry there are Senators in this room whose States either were or are ready to file lawsuits claiming damages. There is surely nothing new about that, for I am sure, just as sure as I am standing here, that if this does not become law, there will be hundreds of them filed across this land. I do not think they are justified under the theory I have expressed and the theory the House expressed to us. Nonetheless, it is probably one of the most contentious issues in this bill.

I suggest that it seems to this Senator we ought to look at the overall bill. The overall bill—I cannot do justice to it in 8 minutes, but I can tell

you one more time, in summary—will make America stronger, will minimize our dependence upon foreign products, in particular should make us less and less dependent upon the potential of foreign natural gas being needed in this great economy. We are moving rapidly in that direction.

The last 15 powerplants in America were built with natural gas. If we build 15 or 20 more, just as certain as I am standing here, we will be importing gas from overseas. So we will just get out of the muddle of importing crude oil and we will have sat by and watched ourselves get back into the middle of importing natural gas.

We have done everything we can, that we could come up with, that we could understand, that we could be informed on, that says America is going to produce as much natural gas as possible. As a matter of fact, things indeed could work out under this bill where Alaska—not ANWR but Alaska—could be selling natural gas to the lower 48 in large quantities.

We have given some tax credits to companies that would do that. We are all hopeful that before too much time passes they will agree to get started.

In addition, we have said there is a great deal of natural gas that lies off the shores of America in valid, not prohibited areas, very deep. We have said: Why isn't it getting produced? It is gas; we can use it; it is ours.

The issue was it was too expensive. We chose in this bill to do what everybody on this conference overwhelmingly supported and that was to substantially reduce the royalty payments so as to make that abundant natural gas available. We believe with the passage of this bill they will be out there drilling for that, adding it to America's reserves, quickly.

There are many more issues like that. I regret we could not produce a bill that would alter the current make-up of the use of fuel in America to produce energy and electricity without some stimulating and some production tax credits that would go to the industries that were not currently involved in producing energy for the American mix.

Incidentally, in that regard, we produced a tax credit for wind and solar energy the likes of which will yield wind energy for America in abundance. I ran into a gentleman yesterday whose company produces windmills and wind energy for America. He thanked me for this bill. I don't know him. I didn't know him. I met him right there. He said he was visiting with a few Senators just to make sure they understood that with this bill wind and solar energy will continue as they are but will strive to move ahead exponentially.

He said: I currently produce more wind energy than anyone, and we will be able to double and triple it with this bill because there is a good credit that is going to continue under this bill.

Incidentally, for those who want that, you should know if this bill

doesn't pass, that tax credit is gone. You can wish all you want about wind energy, if that is what you like, but by not passing this bill you will have wished that away. It will not be part of any mix for the future.

In my judgment, when you add up all those pluses and you take all the negatives that are going to be spoken of here, you have a bill that deserves the U.S. Senate follow suit with the House and approve this bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Parliamentary inquiry: I have not been able to locate this bill. I understand under rule XI the bill should be printed. I understand it may be printed in the House calendar, but I am interested to know whether or not printing in the House Journal represents having the bill before the Senate.

The PRESIDING OFFICER. I have been informed that the bill is printed in the CONGRESSIONAL RECORD.

Mr. GREGG. Does that qualify as having the bill before the Senate for purposes of debate?

The PRESIDING OFFICER. Yes, it does.

Mr. GREGG. I thank the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I thank Senator BINGAMAN for a chance to talk for a few minutes now. He has done a tremendous job in terms of advocating so many issues vital to the public, and I thank him for his thoughtfulness letting me begin this debate.

Throughout this discussion, we have been told this legislation should not be looked at in terms of any particular provision, but it should be evaluated on its overall merit. We heard that yesterday. We heard that again today.

We have been told that a conference report, particularly, is part of a give-and-take kind of discussion among various legislators and the various parties. Let me be real clear on that. If we are using the give-and-take measure as a barometer of evaluating an Energy bill, it ought to be clear that on this one, it is the public that is giving, and the powerful and the influential are taking a whole package of goodies.

In my view, if you look at this legislation and its provisions that in effect begin with the "get out of jail free" card that is given to the MTBE producers, and you go on to this grab bag of tax goodies that are given to powerful interests, on every measure this overall legislation breaches the fundamental principles of good energy policy.

Let me begin by talking about how it would affect our dependence on foreign oil. I believe reducing America's dependence on foreign oil is the dipstick for measuring an Energy bill. By that measure, this legislation is more than several quarts low. Thirty years ago the people of this country waited in long lines to fill up their tanks. They

dreamed then of the day when the United States would no longer be dependent on foreign oil. Our citizens were asked to hold their thermostats down, and they said: What is going to be done to make this country and our electric supply less dependent on fossil fuels?

We all understand our dependence on foreign oil has increased. Fossil fuels still provide more than 85 percent of all the energy produced in the United States. If you look at this legislation, what it does is it gives, on a virtual 5 to 1 ratio, most of the tax relief to those powerful interests that, in my view, have contributed mightily to the mess that our country is in.

What is needed, of course, is a bold and aggressive approach in terms of clean and renewable energy. That is regrettably sorely lacking in this legislation.

So the Senate is aware exactly of the numbers: Renewable energy in this legislation gets about \$3.4 billion over the next 10 years. The combined credits for those involved in fossil fuels comes to well over \$15 billion.

I am of the view that when you look at this legislation and the fact that it does virtually nothing in terms of the key areas like transportation to promote conservation and help us find a way to a different energy future. This legislation simply does not meet the need at this time for a fresh approach in energy.

What is so unfortunate about it is, I believe, a new approach on energy is just about the most patriotic thing our country could do. We all understand the role of oil and energy dependence with respect to global security. Yet this legislation is basically a tribute to yesteryear, a hodgepodge of subsidies for the well connected, and these huge energy conglomerates basically would get additional funds for what they are already doing.

We tried over the last couple of days to amend the legislation. On all of the pro-consumer amendments, they were just gunned down almost in a perfunctory manner. The American people were given 2 days to scan 1,100 pages, more than 40 percent of which by some estimates was brand new text that was not in either the House or the Senate bill. Essentially, we have 500 pages of brand new text that had not been seen by either the Senate or the House.

For purposes of this opening discussion, let me talk about some of the areas about which I am particularly concerned.

The people of my part of the country were shellacked by the Enron scams. One of our major utilities used up hundreds of thousands of dollars of scores of workers' retirement accounts. Now these workers have virtually nothing as a result of Enron. The conference report did virtually nothing to deal with the market manipulation that went on in the Enron case—all of the smoking gun memos we read about in the papers for days involving Death Star, the Ricochet tactics that were used to drive

up market prices, the energy traders who used schemes such as Get Shorty or use a Fat Boy to manipulate energy markets with impunity.

What this legislation does, in effect, is say we will ban just one of the manipulative practices used in Enron but for everything else you have free rein to manipulate the American consumer. It is sort of like building a 4-inch dam across our mighty Columbia; you stop one relatively small practice, but it is going to be drowned out by all the other manipulative schemes.

In my view, this legislation is an open invitation to future Enrons.

With respect to other priorities about which we felt strongly, I tried, for example, to prevent the weakening of current export controls on highly enriched uranium. It seems astounding that at a time when President Bush correctly talked about how important it is to fight terrorism—and we have all been concerned about yellowcake.

I sit on the Intelligence Committee. Of course, I can't get into what is discussed there. But I don't think anybody in the United States doubts the seriousness of the terrorist threat around the world. Controls in current law are intended to end the dependence of foreign companies on nuclear-bomb-grade materials, but the conference report, incredible as it may seem, goes in just the opposite direction and is going to make it easier for terrorists to traffic in these nuclear-bomb-grade materials.

The conference report would give foreign producers a fresh 9-year holiday on converting highly enriched uranium into the much safer low-enriched uranium, a conversion, in my view, that should have happened years ago. I fought in the conference to keep in place the current export controls on highly enriched uranium. I believe had my amendment passed, it would have empowered President Bush to be able to fulfill his goal of keeping nuclear materials out of the hands of terrorists. Unfortunately, this too went down on strictly party lines.

There are other areas with respect to pro-consumer amendments I thought were important which I will discuss briefly.

Many of our parts of the country have been subjected to price spikes in the gasoline market. We saw last summer that many consumers were spending more than \$2 a gallon for gas. In parts of the Southwest, it was up to \$4 per gallon for gas.

I sought to give the Federal Trade Commission authority to go after documented anti-consumer practices such as redlining and zone pricing. At present, every time there is a price spike, Secretary of Energy Spencer Abraham most recently put out various kinds of press releases saying they are doing an inquiry into why gasoline prices have spiked up. Just as sure as the night follows the day, the next time there is a price spike we will hear the very same thing from the Secretary of Energy.

The fact is when you look at the statutes on the books, you will find that the Secretary of Energy has absolutely no authority to do anything with respect to skyrocketing gasoline prices.

What I have sought to do in the conference and over the last few months is give the Federal Trade Commission the authority to go after documented anti-competitive practices in markets where you basically have three or possibly four of the oil companies controlling more than 60 percent of the gas that is sold in this area.

Many Members of the Senate represent just those communities—communities where in effect you have seen the competitive marketplace forces sucked right out of the gasoline markets in their communities. Unfortunately, that too was rejected on a straight party line vote.

In addition, I offered an amendment to create an advocate for the energy consumer. I believed that if you were going to have a whole passel of deregulation and regulatory changes, somebody ought to have the authority to stand up for the consumer. The great majority of our States do exactly that. We all understand that the energy markets have changed. Now there is much more being done in terms of interstate trading of energy, and there is nothing the States could do to go after abuses in the interstate trading of wholesale power.

In the conference, I offered an amendment. I made it clear I was willing to work with both Republican chairs, Senator DOMENICI and Congressman TAUZIN, on it. Yet that went nowhere as well despite bipartisan support.

Pat Wood, head of the Federal Energy Regulatory Commission, thought it was “a great idea” to have an advocate—those are his words, not mine—for the consumer. Regrettably, that idea went nowhere as well.

I have talked about what the conference report doesn't do. I want to talk for a few minutes about what it does do. It gives, for example, oil and gas extractors a blanket exemption under the Safe Drinking Water Act from pumping noxious and carcinogenic fluids underground. It gives energy producers immunity from Clean Water Act protection to present contaminated storm water runoff from polluting our lakes, streams, and marshes. It gives \$30 million to a whole host of mining interests to pursue direct leaching of radioactive mine tailings into the ground.

In other words, the conference report either explicitly allows or it pays to create America's future Superfund sites.

I have talked about the get-out-of-jail-free card for the MTBE producers. This in effect would allow these producers protection from lawsuits that forced them to clean up the problem they created.

In our State, even Republicans in the State legislature are concerned about

not only losing the ability to fund MTBE cleanup in Oregon but they are concerned about the precedent it sets for future cleanup of various other dangerous materials such as perchlorate and TCE.

I think this is part of what concerns me the most. I have always believed that anything important in this town has to be done on a bipartisan basis. It is probably the concern I have that has dominated my career in public service. I think we had an opportunity for a bipartisan bill in this area. As I have been able to do in my home State with our colleague, Senator SMITH, I think there was an opportunity for common ground on a whole host of key kinds of cases that would have laid out a vision for a very different energy future. But essentially what you had for weeks and weeks was a blackout. You had energy blackouts last summer with respect to this legislation. Senator BINGAMAN and I and others who were in the conference faced an information blackout. Any time you go behind closed doors, any time you do something along the lines of a conference in secret, it is an invitation to special interests to exploit their clout and their influence. That is exactly what has happened here.

I will outline one other provision. I know colleagues are waiting, and I am particularly grateful to Senator BINGAMAN for this chance to take a few minutes at the outset of the debate and touch on the proposal with respect to standard market design.

In our part of the world, in my home state, we have the highest unemployment rate in the country. Reasonable energy prices have been a key to our well-being. What we have now in this legislation is a glidepath to set up something called standard market design, a one-size-fits-all approach with respect to energy regulation.

I come to that view because there are two provisions in the report and they are essentially contradictory in nature. The first part of the conference report says you cannot engage in a standard market design regulatory regime in effect until 2007. The second part says it is basically OK for FERC to do anything they want. At a minimum, we have a lawyer's full employment program as a result of this regulatory limbo. But what is more likely to happen, because of the power of the interests that want the standard market design, they are going to exploit the regulatory confusion in this legislation to work their will.

On September 30th I received a letter from a Republican FERC commissioner, Joseph Kelliher, in which he explicitly told me that standard market design is a bad idea for Oregon, a bad idea for the Pacific Northwest, and should not be implemented in our region.

I say to the people of my State and my region, I am still going to fight this with everything I have.

Finally, at a time when our country can be held hostage by oil-producing

nations, we had a chance to go forward with legislation that would make us truly energy independent. At a time when cutting-edge renewable resources are at our fingertips, what this conference report does is it lets these exciting technologies slip through our fingers. At a time when the people of our country have been clamoring for a fresh approach, a different energy future, this conference report looks at energy policy through the rearview mirror. I hope my colleagues will reject this conference report and look forward over the rest of this day and perhaps others to talk about it at some length.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I rise to raise my serious concerns with this piece of legislation. I appreciate the excellent statement of the Senator from Oregon which touched on a number of the issues this legislation raises.

The purpose of an energy policy should be, obviously, to make our Nation more independent of international fuels, to allow energy to be more readily available, and allow more productivity in our society as a result of having energy at a reasonable cost.

There are a number of ways to approach this. Any energy policy should be balanced. First, it forces conservation. Any energy policy should significantly encourage Americans, and Americans in business especially, to use appropriate conservation which does not undermine lifestyle dramatically and does not undermine efficiency but, rather, improves efficiency in order to reduce the amount of energy used.

Second, after conservation, we should use energy products which are renewable, things we can use over and over or at least produce over and over and as a result not be so dependent on international sources of oil.

Third, of course, is production. We should increase production, especially production within the United States or within regions which the United States has a relationship which is more positive and constructive than the Middle East and other areas of significant international attention.

Good energy policy requires those three elements. However, the bill before the Senate does not accomplish that. It does have some conservation. It does have some renewable language and it does, obviously, have some production language but on balance it does not have any of those at a level of intensity or effort, at least in a constructive way, that outweighs what is basically a grab bag of special interest projects directed at benefiting one segment of the economy or one segment of the population at the expense of other segments of the population.

There are a lot of examples of this. The most significant is the overall cost of the bill. This bill was supposed to have \$8 billion of tax credits in it and

it is up to \$25 billion. That difference between \$8 billion and \$25 billion is almost entirely filled not by a broad approach to energy policy but by very targeted, very specific programmatic initiatives directed at certain interest groups in order to give them benefits to pervert the marketplace, to basically say: Here is a winner; everyone else is a loser.

The most classic example is the ethanol package which makes up one of the biggest initiatives in this bill. It is hard to figure out how much subsidy is in this bill for ethanol but it is huge. We know there is at least \$5.9 billion, which is double the present subsidy, and we know on top of that there is probably \$2.5 billion of tax credit. That is probably not all, and as people review this bill, we will find it is even more obscene than that. This is more a product which cannot stand on its own, a product which essentially has been brought to the marketplace because it has been subsidized at such a high level and because it is now, by law, required to be used, it therefore becomes viable. It does not become viable because it can compete in the marketplace—even with lower subsidies.

Some modicum of subsidy might make sense but to basically take a product and say, we essentially are going to pay more for it than it probably costs to produce and we are going to require that it then be used, is hardly a subsidy. It is basically, to be honest, a socialistic approach to managing an economy. The “pick a winner” and decide that winner, whether it works or not, will be paid for, and then you subsidize it at an extraordinary level.

There are, of course, a variety of different projects in here which are essentially projects in home States, projects of people who are friends of somebody, projects of people who happen to be able to get into that room that the Senator from Oregon mentioned was closed to most Members.

We have the advance reactor hydrogen cogeneration project for \$1.1 billion. This appears to be not only for building of the plant but for the operating of the plant, which is an incredible concept. First, the taxpayers will pay to build this plant and then the taxpayers are going to pay to operate the plant. I am wondering what the purpose of the plant could be that has any commercial interests at all and the taxpayers are picking up \$1.1 billion for construction and building costs.

We have \$2 billion to pay for companies to assist them in phasing out MTBE, which is something I will get back to, but there is an irony in that because, of course, the bill limits the liability of those customers and then it pays out the program.

We have authorized loan guarantees for using certain types of coal that come from the Midwest and to build a plant in the Midwest which does not even exist. Basically, we are going to say, there will be a plant out there somewhere and we will put this money

into it to build it. We do not know where the plant will be. We suspect it will be in North Dakota. It is a new concept in taking care of one's constituency to essentially create a plant somewhere in theory. It is a virtual plant that we are going to spend all this money on, and I guess in today's world of virtual reality it is probably appropriate that this bill have some virtual things in it because it does not have much else because the rest of the bill is equally unsubstantive.

As to the abandoned mines provision in this bill, we are essentially going to take an account which was supposed to help in cleaning up the mines which were used in the West, and we are going to take the money out of that account and we will redirect it so, basically, none of those dollars will flow into the cleanup which they are allegedly being raised for.

We have a proposal to build some sort of green shopping centers, whatever those are. That is a great concept. I always wanted to build a green shopping center. I like blue, purple, yellow. Why did we leave those colors out? We are going to build a green shopping mall in Shreveport, LA. We are going to build a green shopping center in Atlanta. We are going to build a green shopping mall in Syracuse. And the taxpayers are going to pay for that.

Building shopping centers is a new concept for energy, for having a national energy policy.

We will spend a lot of time on this over the next week as we debate this bill, because it will take at least a week to do this bill. The most significant detriment in this bill is the fact that it is essentially structured to benefit one region of the country significantly over another region of the country.

It is almost a gratuitous attack on the Northeast from the standpoint of the way it has been put together. The most glaring example of that is the way this MTBE issue is handled.

MTBE is an additive put in gasoline. It was decided by the EPA, in the early 1990s, that this additive should be put in gasoline to make it oxidate faster, thus getting cleaner burning gasoline and reducing air pollution.

It turns out one of the unintended consequences of this legitimate desire to make gasoline burn faster is it is an incredible pollutant, an extremely difficult pollutant to deal with if it gets in the groundwater.

So States which were put under the authority of the EPA to clean their air, and which were then required, in order to accomplish this, to essentially use this additive, now find that although their air may be marginally cleaner, their groundwater is dramatically more polluted.

If you have ever been in a house—and I have been in a number of them—that has an MTBE pollution issue, it is essentially unlivable. You cannot use the shower, you cannot use the sinks, the smell is just overwhelming, and the

water cannot be drunk. It cannot be put on your body to clean. It is a horrific situation.

People in community after community in my State—small communities, cul-de-sacs, groups of homes—have found they are basically unable to live in those houses until the water system has been fundamentally repaired. Sometimes you have to bring in new water because they are on wells in order to address the pollution coming from MTBE.

Thirty-three percent of one of my counties has a serious problem of MTBE pollution, and the percentages are in the midteens and higher in other towns, counties. So it is a serious environmental hazard.

Yet this bill says we will continue to use it and States that are under these orders will have to continue to use it for another period of years, increasing the amount of pollution.

Then this bill does one more thing that is really—I already used this term once, so I hate to use it again, but really is a gratuitous shot. It says States which have pursued a legal remedy for the damage caused by MTBE will no longer be able to pursue those lawsuits.

This bill—because somebody got in that room the Senator from Oregon was talking about got somebody's ear—has language in it which specifically goes back before the lawsuits were brought by some of the New England States and eliminates the ability of those suits to go forward.

Now, when I was in law school that would be called an *ex post facto* law and would be subject to some significant debate. However, obviously, the people who drafted this have figured out a way around that *ex post facto* attack, and they figure they are going to survive this attack and, therefore, they are going to eliminate the capacity of States such as New Hampshire to try to get redress on the issue of the fact that in some counties, up to 33 percent of the water is not usable because of the MTBE pollution.

It is a truly ironic situation that this has happened, that a bill proposed to reduce our reliance on energy would have innumerable special initiatives in it that have no relationship to actually increasing energy production but actually perverts the marketplace, and, on top of that, would take a policy which is being debated in the court system between the States and the producers and essentially wipes that policy, which is in an environmental fight, off the books in an attempt to protect those industries which produce this product.

We heard the Senator from New Mexico defend the position on the grounds that—I believe he used the term—I have it right here; I wrote it down because it is a unique term.

Well, I guess I can't find it right now. Anyway, it was a term that I found interesting because it basically implied that well, really, States should not be able to bring these lawsuits. These peo-

ple should just have to have this groundwater pollution. And, what the heck, why not do it? Why not protect these companies from that sort of pollution forever?

Well, I think you do not protect them because, as a practical matter, you let the court decide whether the liability exists in this instance. This is not a question that is appropriate to this Energy bill, to say the least. It is, in fact, a question which should have been allowed to be resolved by the New England States as they dealt with this question of MTBE pollution in groundwater.

So this bill has some very serious problems independent of the fact that it is philosophically wrong, that it takes a marketplace, and does so much tweaking of the marketplace that you have no longer any semblance of market force in the issue of the production of energy. You simply have a grab bag of winners and losers.

The grab bag is unique. It really is unique. I would have loved to have had a fly on the wall in that room because there must have been just a parade of people coming in and out who had their special projects.

I remember this happened once before back in 1979 or 1980 when we were just coming out of the energy crisis of the 1970s, and we had the Arab oil embargo, and we decided to put money into trying to pick winners and losers in oil production. We put money into shale oil and we put money into wind and we put money into solar. At the time, I supported a lot of that exercise and said, well, that is something we ought to try.

Unfortunately, what we failed to recognize was unless the market makes the product viable, it usually never works. That has been proven because all those initiatives—synthetic fuels, shale oil, things like that—have fallen by the wayside simply because they were not competitive in the marketplace.

So to abandon the market and to pick winners and losers is not that great a policy approach to the issue of energy. It is better to level the playing field and give the producers the opportunity to choose those products which are going to make sense. That happens to be why I was for opening ANWR, for example.

But if you had been in this room, it would have been an interesting experience because as you go through this bill you find it is replete with these little special, targeted items.

Here is one. I just opened the bill because I finally got a copy of it. I just opened it. I arbitrarily opened it to a page. This is so amusing—it is not amusing; it is horrible. But the interest is so apparent and so outrageous you have to smile about it. It is so obscene in its attack on the American taxpayers. This section is called the Geothermal Steam Act. Basically, what it says—and I am almost tempted to read the whole thing—is anybody

who wants is now going to be able to apply to go on to Federal lands and produce geothermal energy.

Well, geothermal energy probably has some productive capability that makes sense. I am not sure it does because no one, other than Icelandic countries, has been able to make it efficient. They have an efficiency with it because they have so much of it, and they are so small.

But basically what this bill says is, all right, you can go on public lands—let's say Yellowstone Park—where there is a lot of geothermal, and you can have the Federal Government evaluate whether or not geothermal energy should be produced there. Obviously, they are not going to do it in Yellowstone Park. That was an excessive statement, but that is where we know there is geothermal power.

Then, if you, the person getting a fairly significant subsidy in this bill for geothermal production, want to, you can then decide you are going to pursue energy there. The Department is under some significant direction to actually give you a permit, at which time you have to go through something called a NEPA process, which means you have to go out and prove there is an environmentally sound way to produce this geothermal power.

All that is outrageous in and of itself because it is basically putting a put to our national lands for geothermal power that is independent of just determining whether or not that is the appropriate use for those natural lands. This is where it gets very entertaining. Then they say, you—us, the taxpayers—have to pay for the NEPA study. We have to pay to reimburse the company that wants to do the drilling or use the geothermal power for the environmental study which they are required to produce in order to prove that the power can be produced in that area. That is a very interesting concept. That is like saying to a drug company, we, the Federal Government, must pay to produce the research to produce your drug, even though you are going to get the profits from selling the drug, or any other business that has to make a basic investment to get the asset which they are going to then sell and make money on because the only significant cost for determining whether or not they are going to get their geothermal power will be the environmental impact study. So to ask the taxpayers to pay for it is, to say the least, an unusual approach.

In the context of this bill, it is very mainstream. It is very much consistent with the rest of the bill, the fact that you are going to have \$1 billion worth of land or purchases made in order to protect the shoreline. But where is it all going to be purchased? Louisiana. Ninety percent of the \$1 billion is going to be spent in Louisiana; or the fact that you are going to have these shopping centers in various locations; or the fact that you are going to have an ethanol program which will probably



cost more in tax subsidy than what it cost to produce the product, certainly more than what the net income is going to be of that product, no question about that; or that you are going to have a subsidy for a variety of initiatives which are now allegedly commercially competitive—the list goes on interminably of tax credits which are now going to be put in place for different industries which already are, theoretically, producing a competitive product. But we have to expand that tax credit.

I won't read them all, but a few of them: There is a credit for production for advanced nuclear power; to repeal the 4.3-cents motor fuel excise tax on railroad and inland waterways; a credit for natural gas distribution; a credit for electric transmission properties—that this is an expensing item—an expensing for capital costs incurred in complying with EPA sulfur regulations; modifications to special rules for nuclear decommissioning costs; treatment of certain income as expenses; arbitration rules not to apply to prepayments for natural gas; a temporary suspension of limitation based on 65 percent of taxable income and extension of suspension of taxable income limit with respect to marginal production—that is stripper wells, I presume—amortization of delayed rental payments—that, I presume again, is a stripper well type of thing—amortization of geological and geophysical expenditures—these are all significant tax benefits—temporary repeal of the alternative minimum tax preference for intangible drilling costs—again, a significant tax benefit—credit for clean coal technology units—that is a tax credit.

Then, of course, relative to the natural gas business, there is a dramatic change in the way they account for their taxes. There is even a credit in here for ceiling fans, for certain steam generators and certain reactors and vessels used for nuclear technology. The list goes on and on: Energy production incentives; there is a special tax credit for granular mine tailings. Maybe that is not tax. I just noted that because it seems as if that may be a misapplication of that or the use of that.

The tax credit section, which makes up the difference between the \$8 billion requested and the \$25 billion that is actually being incurred here in tax credits, is just replete with special interest efforts to try to pervert the marketplace for the purposes of picking winners and losers in the energy production business. That might work at some level. There is no question there may be a legitimate need to do some of that. But this bill is excessive.

It is also clearly not being driven by energy policy but, rather, by parochial interests and by interests who see the opportunity to have significant gain at the expense of others—specifically, the general taxpayer.

We will spend a lot of time talking about these various issues. I think the

more light shown on this bill, the better. I think we do need to spend a few days discussing the issues within the bill. Most specifically, we want to spend more time on this issue of MTBEs and the fact that this bill has essentially been structured to target one region of the country in a manner which seems highly inappropriate and punitive and which is clearly inconsistent with what historically has been the case, which is that you don't pass a law which says the legitimate activity of a State or group of States, in trying to defend the quality of their environment, will be wiped off the books. That is something the Federal Government should not be doing. It should certainly not be being done by a Republican-dominated Congress which theoretically still believes there are States out there that have some rights.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, if the Senator from New Hampshire would stay on the Senate floor for a moment, I don't blame him for being frustrated about the MTBE.

Mr. BINGAMAN. Mr. President, parliamentary inquiry: I would ask my colleague to yield for a question.

The PRESIDING OFFICER. Will the Senator yield?

Mr. BINGAMAN. I was just wondering if those of us who are on the Senate floor could agree on an order so my colleague from Illinois would know when he should be planning to come to speak. I know the Senator from Idaho plans to speak and Senator THOMAS would then want to speak. Would that be the order? And then I would speak and Senator DURBIN after that.

Mr. CRAIG. Certainly. I have no problem with an order.

Mr. THOMAS. Well, you have also been here. If you care to speak after Senator CRAIG, perhaps I could be after you, and Senator DURBIN after that.

Mr. BINGAMAN. I ask unanimous consent that following Senator CRAIG's statement, I be recognized to speak, then Senator THOMAS, and then Senator DURBIN in that order.

Mr. THOMAS. Fifteen minutes apiece?

Mr. BINGAMAN. Whatever period of time the Senator would want.

Mr. CRAIG. No more than 15 minutes for me.

Mr. BINGAMAN. Fifteen minutes for each of us, and a half hour for the Senator from Illinois. I think my statement will probably be closer to a half hour as well.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Idaho.

Mr. CRAIG. Mr. President, the Senator from New Hampshire has left. I don't blame him for his frustration over MTBEs. What he didn't say was that it was a Federal program and a Federal mandate. If there is a liability, maybe it ought to be the Federal Government. It was the Clean Air Act that

drove States in meeting their air shed requirements to address additives to gasoline that would result in some improvement in that pollution. I don't blame him for his frustration in all of that.

I hope we can sit down and resolve this issue apart from the bill that is currently on the Senate floor as it relates to the concern of the Northeast or any State that has experienced pollution and now has a groundwater problem as a result of a Federal program and a Federal mandate passed by this Congress in a Clean Air Act. The product, yes, produced independently by a private company to meet a Federal mandate and now, of course, years later, after the application of that product, we find that there were environmental consequences.

For a few moments this morning I want to talk about the energy bill we have before us, the Energy Policy Act of 2003, and to bring some context to it, on where I believe we are and how I believe we ought to approach this particular piece of legislation.

I came to the Senate in 1990. I went on the Energy and Natural Resources Committee in 1990. In 1990, we began to talk about the need for a national energy policy because we were growing increasingly dependent upon foreign sources for our energy—primarily hydrocarbons—but we had a myriad of Federal regulations that were in large part driving energy policy into a non-productive approach.

We were basically saying to the energy companies of our country, whether electrical, hydro-based, or nuclear-based, or whether they were coal-based—we were saying to the hydrocarbon companies: You really ought not do business here because it is going to be so expensive to meet all of these Federal rules and regulations.

We had the Clean Air Act and the Clean Water Act. National environmental policy has been talked about by the Senator from New Hampshire. That was in play, and it was beginning to have very real consequences in the ability to produce an abundance of energy for our country at a reasonable cost to the consumer.

Our economy has been based on—historically and even today—an abundant supply of low-cost energy. Every American is the beneficiary of that. From the car you drive to the toys you play with out there in recreational ways, to the home you heat, to the products you use—all of them have been tied to an abundant supply of energy at a relatively low cost. But that was because we had always been producing a lot of energy.

In the 1990s, all of the environmental regulations came into play. Attitudes shifted there. There seemed to be an attitude on the part of policymakers that energy was always going to be in abundance, always going to be there; therefore, you could begin to regulate and control it for a variety of different reasons and it would just keep coming.

That is not so. The decade of the nineties proved it. In the decade of the nineties, we experienced unprecedented economic growth, but we also became increasingly huge consumers of energy at a time when we were no longer producing much energy. We were living off the surpluses that had been built into the capacity of the energy development and producing system in our country and a delivery system that was produced in the sixties and the seventies and the 1980s.

Guess what began to happen in the latter part of the nineties. The lights went out. The lights dimmed and, of course, energy costs began to go up. That once 75 cents or 80 cents a gallon for gas all of a sudden went to \$1.25, \$1.60, and not long ago, in some areas, it spiked at \$4 in one instance. We saw what happened to electrical energy. No longer was that switch that you woke up to every morning and flipped expecting your home and bedroom and bathroom to be filled with light—no longer was that switch something you considered automatic, that you just flipped and it was always going to be there. The generation at hand always accepted that energy was always there and relatively inexpensive, but, more importantly, they believed it was always going to be there: Just throw the switch and on came the lights.

In the late part of the nineties, they threw the switch in California and the lights didn't come on. What happened this summer in the Northeast? They threw the switch and the lights didn't come on. Somebody has to be to blame; the lights are not coming on. We went to the gas pumps, and all of a sudden it was costing us an arm and a leg to fill up our cars or SUVs; any form of transportation was beginning to cost more.

What happened? Why are we here? This President, George W. Bush, before he came to office as President elect, met here with the majority leader and leaders in the Senate and said: We have to get this country back into the business of producing energy—all forms of energy, including hydrocarbon, electrical, green energy, black energy, but environmentally sound in all respects. We have to get back into the business of production.

No longer were we 35, 40, 45, 50 percent dependent; now we were 55 percent dependent upon some other country to supply our hydrocarbon base. We had to begin to extend our politics around the world to secure the stability of that market and that supply because we decided here at home that we were no longer going to be producing it because there was an environmental cost to that production.

If you were witnessing the Senate floor a couple of years ago, the debate was on producing oil in Alaska. This Senate basically said: No, we are not going to do that anymore; the environmental consequences are too great. So we will let somebody else produce it in Saudi Arabia or in Iraq or Russia, and we will pay them and we will ship it

over here. They will profit by it and we will spend it, we will use it.

That is really what our policy said—not in a spoken way but in an unspoken way.

That is why this President and it is why others—I and others who work on the Energy Committee and studied the market and watched the trends over the past decade—realized something had to be done. We began to try, as Republicans and then as Democrats.

The Senator from New Mexico is in the Chamber. He chaired that committee. He worked mightily hard to produce an energy bill a couple of years ago, and we got it to the floor and we passed it out of the Senate. I voted for it. Why? Because it was a major step in the right direction. In fact, it was the bill of the Senator from New Mexico that passed out of the Senate this year because we could not get our bill out. We could get enough votes for that bill.

What was happening out there was a growing consensus in the Congress, the House and the Senate, that something had better get done.

Now, let's take the Clean Air Act. To maintain clean air quality, you heard about the problems we created in the Northeast with MTBES—that additive to fuels. We have another problem as it relates to all of that. The lights went out up there this summer because we had not created an environment in which investment in a profitable way could be put back into the electrical grids and electrical systems, that could be returned to the investor so that these kinds of problems would not exist. There were a lot of other things we tried to do.

Out of all of that, there clearly came a consensus that something ought to be done. What you have before you now—and my guess is we ought to debate it for a good long while—is the Energy Policy Act of 2003. It just passed the House. It is a mighty big piece of legislation, no question about it. What does it do? It puts the United States back into the business of producing energy. That is what it does. It didn't pick winners or losers. It largely said, pick it all, get it all, advance solar power, advance wind power, advance conservation, take the old technologies of gas, coal, and oil and put new technology to them so that we can use those abundant resources in a way that they will be environmentally cleaner.

That is what we are saying here. We are not subsidizing. We are saying that if you invest your dollars into the market, you are going to get a tax credit in return. That is called incentivizing investment. That is why those who look at our work product say that over the course of the decade this bill could produce over 800,000 new jobs in the lower 48 States and Alaska and Hawaii. Why? Because we are asking the marketplace to invest, and we are incentivizing all of the bits and pieces of the marketplace.

I used to be a bit selective—solar is only a percent; wind may be a couple

to 3 percent. Was it worth doing? Yes, it is worth doing. It is clean. So we add it up and it is 4, or 5, or 6 percent in the total marketplace over the next decade, and it is clean energy. Americans want clean energy, and we ought to be doing that. So we are doing it in this bill.

We are also saying, without question, that coal is a huge producer of electricity today and it has caused problems in the past. We have a Clean Air Act, and we want to drive ourselves toward ever cleaner air. Here we are continuing to incentivize the substantial investment in clean coal technology.

What is also transpiring here—and we heard it debated on the floor a good number of times—is the issue of greenhouse gases and climate change, a product of burning of hydrocarbons. This bill goes more toward climate change and improving our environment than any climate change bill we ever had on the floor of the Senate, and here is the reason: Every new technology, every new dollar invested in the marketplace puts down a cleaner form of energy and brings down the overall emission of greenhouse gases. That is what happens when you create new technologies and you bring on line new approaches. It was the old approaches that were producing the greenhouse gases using hydrocarbons. The new approaches are producing substantially less greenhouse gases.

As this economy comes back under new technologies, already per unit of production in our economy we are using less carbon, and that has already been shown. We are leading the world as it relates to unit of production as to the amount of energy or carbon produced by that production. This bill drives us even further toward a cleaner environment because we are investing in the environment, and we are incentivizing that investment.

Madam President, how much time do I have?

The PRESIDING OFFICER (Ms. MURKOWSKI). Two minutes remaining.

Mr. CRAIG. Madam President, another area that is significant in this bill—and I will be talking later about a variety of the approaches we have taken—is the area of nuclear energy, without question one of the cleanest forms of energy out there. There are no emissions. There has always been a concern about waste management and the waste stream that comes from nuclear plants, but we also have recognized our ability to manage it and other nations' ability to manage that waste stream in a responsible fashion.

In this bill, we clearly incentivize the marketplace to get back into the business of electrical production through nuclear generation. We have even proposed a new reactor concept called a passive generation 4 reactor, and also we will tie to that an electrolysis process to produce hydrogen, to begin to fuel this new exciting initiative which our President led in saying the transportation fuel of the future ought to be



hydrogen. Why? We can produce it, and we can produce a lot of it. We ought not be producing it from natural gas; we ought to be producing it from water. Let natural gas heat space. Don't ask natural gas to generate electricity or create hydrogen. That is not the way to use natural gas. That is part of what has driven the cost of it up. So another new initiative.

While anyone can stand on the floor and pick at the pieces, look at the whole. It is a market basket full of energy for the future of this country to ensure reliability so that when you wake up in the morning and you turn on the light switch, the light comes on; when you plug in your computer, the screen lights up; when you go to the Internet, you can communicate across the world instantly, and it is all driven by energy.

Every single minuscule thought is driven by energy, and this country hasn't been producing energy for over a decade. We have been only the consumer of that energy basket. I think we ought to be proud of this work. I think we ought to be energized to pass it for the future of our country, for the future of our economy. We incentivize the marketplace to go back to work and produce all forms of energy from every concept and every idea.

Let's not pick winners and losers. I am sorry, we don't pick winners and losers. The Senator from New Hampshire is wrong. We say do it all and do it well. Out of it may come new sources that 30 or 40 years out dominate the energy supply of this great country.

I am proud of the work we have done. I hope the Senate will join collectively in adopting the conference report. The House has already seen the merit. The President strongly supports it. Let me tell you, the American people support this package because they don't want \$4-a-gallon gas, and they want the light to come on in the bathroom when they wake up.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. I thank the Chair.

Madam President, I will speak for a few minutes about the Energy bill. I know we will have additional opportunities to speak as the day wears on, but I wish to give a few comments before my colleague, Senator THOMAS, speaks.

We are beginning today the debate on H.R. 6, which is entitled the Energy Policy Act. We have had many hours of debate on this subject in the Senate over the last few years. The debates we have had before in the previous Congress and then this year in this Congress have resulted in our passing an Energy bill with an overwhelming vote.

I am very gratified to recount that the Senate did vote with a large majority, a bipartisan majority, in favor of an Energy bill in 2002. In the 107th Congress, we passed an Energy bill by a vote of 88 for the bill and 11 against and 1 not voting. Earlier this year, we passed the same bill we had passed in

the previous Congress again with a large bipartisan majority: 84 Members voted for it, 14 against, and 2 did not vote.

Of those who opposed the bill, I would say there is fairly good representation from both parties. So this has not been a bill that has gone through the Senate, as previous energy bills, on a partisan basis. I think we can all take some gratification in that.

It is important, in my view, that we deal with these issues—the issue of energy supply, the issue of energy sufficiency, concern about the important connections between energy policy and environmental policy, including global warming, to which my colleague, Senator CRAIG, was just referring. Those are all issues that I think deserve substantial attention as, I have said, we have devoted substantial time to them.

It is not easy to bring together all the competing views and points of view that come together in this legislative body and come out with an end product. I congratulated my colleague, Senator DOMENICI, the other day when we concluded the conference on the fact that he had been able to produce a conference report. I did not congratulate him on the content of that report because I had serious disagreements with it, and I expressed those views. There is a substantial amount involved in producing a conference report, and he deserves credit for doing that.

The chairman of our committee said—and the chairman of the conference said—he did not consider this report to be perfect. I could not agree with him more. I recognize that it is not fair to expect perfection in this process, but we could have done much better had the process been a better process. We could have done much better in terms of the product that was produced.

I believe we find ourselves now with a bill that does not command the broad support and staying power we should have in a national energy policy.

I think the entire country should be brought into a national energy policy and support a comprehensive approach to dealing with our energy problems.

Our difficulty, of course, is we now are presented with a bill that we either vote for or against. I have been one who has advocated adopting an Energy bill. I have advocated for essentially the basic premise that President Bush campaigned on when he ran for office. He said that we needed to try to put in place something that was a coherent national energy policy, and I essentially agreed with that idea.

I remember former Chairman Bob Galvin of Motorola saying at one point there are certain things that the country should set out to do on purpose. To me, establishing a national energy policy seems to be one of those things that we should set out to do on purpose, because if we allow the issue to go unaddressed and the subject to go unaddressed, we can find ourselves substantially disadvantaged economically

and in many other ways by virtue of not having an energy policy. I fear that is where we find ourselves today in many respects.

So while I compliment the President for recognizing the importance of an energy policy, I do not think he got us off on the right foot once he became President in trying to develop that comprehensive, coherent energy policy. By that I am referring, of course, to the process that the Vice President was tasked to perform and did perform of trying to come up with a blueprint. That was a closed process. There have been efforts through the courts and otherwise to try to find out precisely who was talking to whom and which groups and individuals were consulted, but clearly that was a closed process. There was no reaching out to Democrats in the Congress. To my knowledge, there was no reaching out to many of the groups that have a vital interest in this issue. That was a mistake. At the time, I said it was a mistake. It prevented policymakers from hearing the broad range of views that would have been offered, I believe, in a constructive manner.

In addition, the conduct of that exercise, in that closed process, failed to generate the public trust and confidence that we ought to have behind the energy policy we adopt. So I think the President made a mistake in the way he got us started on developing an energy policy. Unfortunately, that mistake has been repeated in the process that we have seen leading to this final conference report.

My colleagues and I on the Democratic side of the aisle in the Senate have voiced our concerns about this many times. The conference was a closed process. In my view, clearly that was not designed to get us a product that would enjoy broad support, and it has not. We did have a meeting. We had, of course, one early meeting where conferees were permitted to come forward and make opening statements. Then some 71 or 72 days later, we had a final meeting, which lasted approximately 3½ hours, where Democratic conferees in the Senate offered 20 substantive amendments on a wide variety of topics. None of those amendments can be found in the conference report today. That leads me to conclude the exercise was cosmetic and that there was no real intent, as we went into that final conference meeting, of seriously considering any of those Democratic amendments since none of them were agreed to.

In fact, one that was agreed to by the Chair when it was offered was, of course, rejected by the House, as were all the others.

Of the 4 that slipped through the process—16 of the 20 that we offered were rejected out of hand. Four of them did get through the process, but they were all rejected on a party-line basis by the House Republicans as the first order of business when they convened later that same evening.

We went to conference on this bill expecting we would be able to participate in a meaningful way. That was not permitted. I regret that it has gotten to the point we are at now.

The common ground that was reflected in the Senate-passed bill was based on a few basic principles, and I will allude to those. First, perhaps most importantly, was the basic agreement that we needed to have an energy policy that struck a balance between increasing energy supplies and encouraging additional energy efficiency or conservation. I think all of us can agree, at least at some level, of a conceptualization that both have to be done in order to deal with energy problems. Supplies have to be increased. Usage has to be decreased. That is the only way to begin to make up the enormous deficit which we are currently operating under with regard to energy, where we are importing a tremendous amount of energy.

The reality is that our country does need new policies in both areas, and that was what we set out to do. On the energy supply side, one of the most important national needs is to meet the need for natural gas. Natural gas is the fuel of choice for most electric generation that is now being planned. We know there have been plans to construct substantial additional electric generation that uses natural gas.

Natural gas will play an important role in any new distributed generation that is planned in the future. It is favored by alternative fuel vehicle programs in both the Government and in the private sector. It is the most likely feedstock to produce hydrogen.

The President has indicated his strong support for moving to a hydrogen-based economy. The point which I think often gets lost is that the most logical and ready source for that hydrogen is natural gas. So it is not possible to just say, OK, let's not use oil and gas, let's use hydrogen. Natural gas has to be used, or at least that is what most people think is the most economic course to follow.

Apart from its energy uses, of course, natural gas is also a critical feedstock for the petrochemical industry and the fertilizer industry.

Over the long haul, natural gas consumption in this country is outstripping the amounts we are able to produce in the lower 48 States. We as a nation are in the early stages of developing a substantial dependence on foreign sources of natural gas. Just as we find ourselves today dependent upon foreign sources of oil, in the near future, the next decade or so, we are going to find ourselves substantially dependent upon foreign sources of natural gas. That is not a good result, and it is not one that we should sit by and idly allow to occur.

We all know, and the Presiding Officer today knows better than any of us, that there are at least 35 trillion cubic feet of natural gas that are stranded on the northern slope of Alaska, Prudhoe

Bay. That gas has been produced and is being produced every day, along with the oil that we now produce at that location. The gas is currently being pumped right back into the ground because there is no way to transport it to the lower 48 where it is needed.

As we see the price of natural gas go up in the lower 48, as we may well this winter—we do not know—we need to remember there is a substantial supply of natural gas that we are not accessing. We need to provide financial incentives to the private sector to help in the construction of a pipeline to bring that gas to the lower 48. Such a project would not only help with our national energy needs, national energy security, it would also, of course, be a great boon to construction in this country, and to the domestic steel industry.

We hear a lot of talk about how this bill before us is now a jobs bill. To the extent that one cannot argue the virtues of it from an energy perspective, they have to talk about it as a jobs bill. There are jobs that will be created from this bill. There are a great many more jobs that would be created if we provided an adequate incentive for the construction of the pipeline in Alaska. On this topic, the conference report does not measure up. It does not do what we did in the bills that we passed through the Senate, in the bills that we passed through the Senate both last year and this year.

It does contain regulatory streamlining procedures for the pipeline that former Senator Murkowski and I worked hard on in the previous Congress. That is a critical part of the problem. But in order to get the pipeline constructed, we also need to have fiscal incentives. The Senate voted for those. The administration opposed them.

Once Chairman DOMENICI announced publicly that they would not be part of the conference report, all of us who were officially conferees received a letter from the CEO of the gas company that has been most active in promoting going forward with the design and construction of such a pipeline, and that corporate executive stated that based on his understanding of the conference report, his company could not proceed with the project in face of the extraordinary financial risk that it would have to bear if gas prices were to drop below what the Energy Information Administration agrees is the likely level.

So the lack of a risk mitigation mechanism, that probably would never have cost the taxpayers a dime, and even if it had cost taxpayers, there was a provision to ensure that those funds would be repaid when the price went back up again—but because of the lack of that risk mitigation mechanism, the likelihood is that our Nation will forego the possibility of using that Alaskan natural gas for future supply needs.

We will, instead, depend on imports of liquefied natural gas. We will bring

our natural gas from places like Nigeria and Trinidad. Those are places, of course—some of those places, at least—that have their own problems with regard to political stability and the security of that supply.

Building the necessary transportation system for LNG, liquefied natural gas, will create jobs for shipyard workers in Korea, but we will not have the jobs for pipeline construction for Americans on this continent.

I believe this is an unfortunate policy mistake that our country will come to regret. I am disappointed we were not able to maintain in the bill the financial incentives that we put in the bill when the Senate acted previously, both in the last Congress and this Congress.

Along with providing for more robust domestic supplies of natural gas, we need to look for ways to diversify our energy generation away from such reliance, such strong reliance on gas. One important arena in which we can do this is in electricity generation.

The bill the Senate passed earlier this year focuses this diversification strongly on new technology, including ultraclean ways of burning coal. Ultraclean coal is the most sustainable way over the long term to ensure that coal maintains its key position in our national energy mix. This is because concerns about the levels of pollution emitted from coal-fired plants are only increasing. It increases, of course, as the concern about the contribution of coal-fired generation to global warming increases.

This conference report unfortunately takes a step backwards from what we passed through the Senate in its commitment to ultraclean coal. The percentage of funding dedicated to these purposes is cut by 20 percent. A new competing program of direct grants to companies to pay for half of the cost of current technology pollution equipment, and current technology coal-fired generation is also put in place.

In my view, we have limited Federal funds. Focusing those Government subsidies to buy today's technology instead of investing to create tomorrow's coal technology, risks coal's ultimate ability to maintain its position in our energy mix. I think that is unfortunate and a policy mistake as well.

Another key part of the strategy of diversifying away from natural gas would be to tap into opportunities for distributed generation, such as combined heat and power at industrial facilities. Here again, the conference report falls short as it does not address the barriers that have been erected to uniform interconnection of distributed generation to the grid. It is not enough to have the technology. We need to rid ourselves of the redtape that is keeping that technology from being used. Again, I believe our previous bill facilitated that. I don't believe this bill does.

Along with these steps, we also need to make a greater push to introduce renewable energy technologies for electricity generation. Some of these renewable technologies are already cost competitive. Wind is the prime example. But in order to see widespread use of these technologies, both financial and regulatory incentives should be put in place. That means both a meaningful production tax credit—and there is a meaningful production tax credit in this conference report. I commend the drafters for that. We would need that, but we also need a flexible renewable portfolio standard for electric utilities.

For those who have not been studying this area, a renewable portfolio standard essentially means a requirement on utilities to produce a certain portion—in the case of our bill, 10 percent—of the power they produce or that they sell, 10 percent of that power should come from renewable sources. That is what our Senate bill provided. That provision, of course, has been deleted from the bill that is now before us. I think that, again, is a mistake in policy.

The lack of an effective renewable portfolio standard is a major missed opportunity for our country. There are those who argue that we should leave this to the free market. But the reality is that a majority in the Senate, a majority of Senate conferees have disagreed with that. In spite of that, we have deferred to the House, and the House says they don't like it. We say fine; if you don't like it, we will drop it.

The conference report is pretty much status quo on the future of renewables and the future role of renewables in our energy mix. Tax credits are extended for a few more years and slightly broadened, but renewables do not get anywhere near the attention lavished on them in this legislation that the coal industry gets or that the nuclear power industry gets.

Coal and nuclear power have problems with regard to social acceptance. So in the absence of a stronger push forward on increasing renewables I think the conference report is basically making a choice in favor of the existing trends toward an overreliance on natural gas for future electric generation. That choice leaves our citizens' future natural gas and electricity prices that are more volatile than they should be, resulting in more frequent price spikes than we would like to see. People will come back and say: Why did you in the Congress not try to deal with this problem and anticipate this problem and head it off in a more meaningful way?

Renewable energy technologies can help with another energy supply issue that we face and that is of transportation fuels. The conference report mandates a phase-in, an introduction of up to 5 billion gallons of ethanol in our gasoline supply by 2012. This has been coupled in the conference report

with the issue that has already been discussed fairly broadly here in the Senate this morning, and that is the issue of how to treat the gasoline additive MTBE, methyl tertiary-butyl ether. One provision in the ethanol title purports to ban MTBE by the year 2014, but when you look at the rest of the language, it is clear the ban is full of loopholes.

For one thing, each State Governor can opt his or her State out of that ban, if the Governor determines. This language is sufficiently vague that it appears that States can opt out, even after the purported national ban goes into effect.

I do not know if that was intended, but that certainly is the way it appears.

One other problem with the language is that the President is given extraordinary powers to make the statutory ban null and void by a stroke of the pen in the year 2014 before it takes effect. With these kinds of loopholes, it is not likely MTBE will actually be banned nationwide in 2014.

In addition, the conference report provides product liability protection for MTBE and does so retroactively as to September 5 for any lawsuit filed after that date. The Senator from New Hampshire spoke about his objection to this as it affects his State. I can certainly understand that objection. I think it is one other provision that undermines the broad bipartisan support we really ought to be able to enjoy for this bill.

Even with the greater use of renewable fuels in cars, we still will be very dependent on oil for the transportation sector. It is in our national interest to support domestic production of oil. But many of us know our domestic production of oil is not adequate. We are more and more dependent on foreign sources of oil, and most of that growing dependence on foreign sources of oil is occurring in the transportation sector as we are using more and more gasoline for larger and larger cars every year.

I notice, as everyone else does, all of the advertisements for Hummers. I am sure that is a great vehicle, but the reality is that when you have such a focus on larger and larger vehicles and less and less efficient vehicles, as we have and have had for some time in this country, it is clear that our dependence on foreign oil will grow, as it has been growing.

I understand that the answer to our doing nothing there—we did not do a great deal in the Senate bill on this subject, and we did much less than I wanted to do. But we did adopt an amendment by the Senator from Louisiana, Ms. LANDRIEU, that set a goal for reducing the amount of oil consumed in our transportation sector, and we gave broad discretion to the President and the Secretary of Transportation as to how they achieve that goal. That provision, modest as it was, has been deleted from this bill. That, in my view, was an unfortunate deletion

and, again, a wrong direction for us to be going in our national energy policy.

I have various other points I wish to make. I know my colleagues are here ready to speak. I will have opportunities to speak later and conclude my remarks on a whole range of issues since this is such a comprehensive subject. It is a comprehensive set of provisions with which we are being presented.

At this time, in deference to my friend, Senator THOMAS, let me yield the floor so he can speak. Of course, the Senator from Illinois is also here ready to speak. I will defer to him as well.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Madam President, I thank my friend from New Mexico and the ranking member on our committee. I thank him for the work he has done.

I think it is interesting, as we hear people begin to talk about this bill and talk about the need for an energy policy, to say how important it is for us to have one and then spend the rest of the time opposing the things that are there.

The fact is we do need an energy policy. We haven't had one for a very long time. It has been something we have been working on now for 3 years. The other side of the aisle was unable to get one for the last year, and we worked right up to the end and it didn't get through. Now we have worked on it another 2 years, and we ought to be able to get it finished. I am disappointed that everyone talks about the need and then begins to talk about why they don't like this bill and this little piece and that little piece. I understand. It is a broad bill. But it is an important issue.

We need an energy policy. We need the kind of energy policy that gives us some direction for where we are going to be in the future. It is not designed to deal with all the problems that may exist today, although some of those are there of course. We ought to be looking to where we need to be in 10 years or 15 years down the road. That is what policies are for—to talk about the future.

It obviously has to be a balanced policy. Unfortunately, I am afraid very many of our friends here and very many of the folks in the country are just accustomed to turning on the lights, going to the gas station, and not thinking about how it happens to be there.

It is kind of interesting that for States that are dependent on all other sources, their representatives are more opposed to doing something than the people who are producing the product. I think it is time they begin to take a look at the fact that energy just isn't there naturally. There has to be a policy to do that. It has to be a balanced policy.

We are looking at conservation. We are looking at alternatives. We are looking at renewables. Of course, in the short term, in reaching those goals, the most important thing we have to talk

about is domestic production so that we aren't becoming more and more dependent on foreign countries to provide what we are using.

One of the reasons is that much of the opposition comes from environmentalists who only look at things from one side. This needs to be balanced. In my State of Wyoming, we are very concerned about the environment. We also know that you can have multiple use, you can have production, and you can also take care of the environment. You don't just have to say you can't touch these areas. These are the kinds of balances we have to find to really be able to move forward the way we would like to do.

I thank Senator DOMENICI and Representative TAUZIN and their staffs. They worked very hard. We worked on it very hard as well, prior to putting it together for the Senate and certainly from the House side, with a mix of domestic production, research and development, incentives to cause these things to happen, and conservation. We will be better off certainly with the passage of this bill and this legislation. It has been over a decade in coming.

It has been over 2 years—almost 3 years—since the President's office and the Vice President particularly set about to come up with an energy policy so we will have some direction on where we are going as the demands increase, which they are. There has to be some way to meet those demands.

The idea that you can suddenly go to alternatives and renewables—they produce now about 3 percent of the total we utilize, notwithstanding the dams and that sort of thing. But air, wind, solar are a very small percentage. They have great possibilities for the future, but that isn't going to happen next year, or the next year, or even 5 years from now. That is what this thing is all about—to make some movement.

We have experienced blackouts. We have experienced natural gas price hikes and all of those kinds of things. When that happens, suddenly everybody talks about energy. When that moves away from us, we forget about it again. We really ought to stay on the issue. I don't think we should, nor can we, wait for another crisis to be able to do something of this kind.

If there is anything we should have learned in the 21st century and the quality of life that we seek, the idea of creating jobs, the idea of having a vibrant economy is very closely enhanced and tied to reliable energy and a clean environment. Those are the goals that we have. We have to modernize conservation to be able to do that job more effectively.

Everyone is in favor of conservation. But how much have you done in your home in terms of having incentives to change the equipment you use to make it more conservation-like? Very little. We just want more power at a cheaper price.

What have we done to modernize our infrastructure? We see things chang-

ing. With more and more market generators who do not make the distribution and have to move it to a market, then you have to change the system, you have to change the system of moving power. Those things change. Indeed, they are changing.

We have to increase our energy supplies, including renewables and alternatives.

We can do a better job of protecting the environment. I am persuaded. Obviously, there are some places in our States that should be set aside—and they are set aside—national parks, wilderness areas, parts of the forests, and this and that. Half of our State land belongs to the Federal Government. It is public land. We have to find a way to have alternative uses and to have multiple use. We intend to do that.

Finally, one of our goals ought to be increased national security. What could be a more important goal than that? Are we going to be dependent on Iraq and Saudi Arabia for our energy? We need to change that. After years of talking about it, this is a good opportunity to do something.

In any bill as complex and as large as this, there will be items of disagreement, such as MTBE liability. Of course, we can talk about that the rest of the month. But we ought to give a little thought to where we need to be with energy and whether that is the tradeoff necessary to defeat a bill. I cannot imagine that tradeoff. We need to have a balanced approach. That is what we seek.

There has been a lot of talk about the tax credits. Let me state what they are for: tax credits for residential energy efficiencies; tax credits for producing electricity from certain renewable sources; tax incentives for fuel-efficient vehicles; tax credits for efficient appliances. All the talk of tax credits, and that is what they are for. That is how a private sector system gives incentives.

For reliability, accelerated depreciation of natural gaslines so we can have accelerated depreciation for distribution, electric transmission lines. We need reliability to move the energy; open transmission, to be able to deal with the changes taking place in the development of the energy we have now.

Production: How to get more production of gas and oil? Through incentives. Marginal wells, low-production wells, do not produce. There has to be an incentive to continue to produce, to continue to reintroduce CO<sub>2</sub> into the ground. These are not to make someone wealthy. These are designed to cause things to happen.

Suspended income in the percentage of depreciation for small producers, provide amortization for geophysical expenses to determine where we have production opportunities for oil and gas—these are the items we mean when we talk about tax credits.

Yes, there are substantial credits but that is how we move toward domestic

production. We can do it in an economically and environmentally sound manner.

Oil and other fossil fuels provide 85 percent of all energy use in the United States. The fact is, we still depend on coal largely for the development of electricity. Quite frankly, we ought to depend on it even more because gas is so much more flexible for other uses. We are working on ways, with some of the dollars in the bill, to provide cleaner plants for the production of electricity with coal. That is part of the overall plan to move forward.

Renewables, including hydrogen, currently provide about 7 percent. Absent hydro, it is only about 3 percent. We built a building for a company I worked with in Caspar and we used solar. This was about 15 years ago. Quite frankly, it did not work. We had to remove the solar panels and do something else. We had to find another way. Now I think it probably would work. We have to move forward.

There is a difference in views depending on where you are from. The New Englanders have one point of view; of course, they use the energy. Some of the rest of the country produces as well as uses energy. My State produces about 35 percent of the Nation's coal and has the greatest coal reserves of any place in the United States. We are sixth or seventh in the production of oil. In gas, we are about fifth. We have come up with a methane production opportunity recently. There has to be a policy that encourages production so we can move forward.

We have to have investment in the transmission. We find increasingly the market is here and the energy use is over here. That is a problem in California. California is the biggest user of energy but that is not the energy development area. We have to move that energy, whether it is through pipelines or transmission.

In the bill we are trying to put together regional transmission organizations for electric transmissions so the States can collectively make some decisions with respect to interstate movement. No Member wants to leave it all in the hands of FERC, although there has to be some opportunity for FERC. We have to leave some responsibility there.

We have had a big hassle over standard market design. This bill puts in a standard market design as it was designed a couple of years ago. But it does recognize that FERC still has to ensure reliability so we do not have blackouts, to assure the opportunities for movement of energy among States, which is not always an easy thing to do. These are realistic issues.

I am surprised sometimes we find so much opposition to ideas. Ideas have to be here to accomplish our goals. That is what a policy is, to have a goal and decide how to get there. I cannot help but continue to be a little surprised at

the difficulty in getting an energy policy on the ground. In any bill as complicated as this, everyone has a different view and everyone can change things a bit. This has become a collective bill, put together by the House, the Senate, Democrats, Republicans, people from New England, people from all over. We have a mixture of ideas. I would not have done it exactly this way had I been doing it by myself, but I think it is important to have a policy to move on, dealing with our demand for energy, and moving in the direction we want.

In general, this is a good bill. This is a bill that moves us forward for energy in the future, the kind of future in which we can work on our conservation methods and, hopefully, reduce the demands we have—at least the growth level we have had in the past—and that we can find alternative fuels.

As we move forward, we are looking now at coal as the basis for hydrogen. That can be very important. Imagine if we developed hydrogen cars next year and were ready to go with them as a clean and available source. How long would it take to get the delivery system in place, to get hydrogen stations instead of gas stations all over the country?

When we think about potential changes out there, we have to think about reaching that point. We must continue to provide energy as we now know it, as we move toward something different. All this talk of more oil and gas, we will have renewables. Good luck. What are we going to do in the 15-year-period of transition?

I hope we continue to look at a balanced policy with conservation, alternatives, domestic production, research, more cleanliness in production, and so on.

We will continue, I suppose, to talk about this matter for a while. I am disappointed that apparently there is going to be a reluctance to let us move forward with it as quickly as we should. We are trying to complete some business this week, and yet it is going to be very difficult to do that.

#### VETERANS HEALTH CARE AUTHORITIES EXTENSION AND IMPROVEMENT ACT OF 2003

Mr. THOMAS. Madam President, I ask unanimous consent that the Senate now proceed to the immediate consideration of Calendar No. 383, S. 1156.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1156) to amend title 38, United States Code, to improve and enhance the provision of long-term health care for veterans by the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which

had been reported from the Committee on Veterans' Affairs, with an amendment to the title and an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 1156

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

[This Act may be cited as the "Department of Veterans Affairs Long-Term Care and Personnel Authorities Enhancement Act of 2003".]

#### TITLE I—EXTENSION AND ENHANCEMENT OF AUTHORITIES

##### SEC. 101. EXTENSION AND MODIFICATION OF CERTAIN HEALTH CARE AUTHORITIES.

[(a) TREATMENT OF NONINSTITUTIONAL EXTENDED CARE SERVICES AS MEDICAL SERVICES.—Section 1701(a)(10)(A) of title 38, United States Code, is amended by striking "December 31, 2003" and inserting "December 31, 2008".]

[(b) REQUIRED NURSING HOME CARE.—(1) Subsection (a) of section 1710A of such title is amended by striking "70 percent" and inserting "50 percent".]

[(2) Subsection (c) of such section is amended by striking "December 31, 2003" and inserting "December 31, 2008".]

##### SEC. 102. ENHANCED AGREEMENT AUTHORITY FOR PROVISION OF NURSING HOME CARE AND ADULT DAY HEALTH CARE IN NON-DEPARTMENT OF VETERANS AFFAIRS FACILITIES.

[Section 1720 of title 38, United States Code, is amended—

[(1) in subsection (c)—

[(A) by designating the existing text as paragraph (2); and

[(B) by inserting before paragraph (2), as so designated, the following new paragraph (1):

["(1) In furnishing nursing home care or adult day health care under this section, the Secretary may enter into agreements for furnishing such care utilizing such authorities relating to agreements for the provision of services under section 1866 of the Social Security Act (42 U.S.C. 1395cc) that the Secretary considers appropriate."]; and

[(2) in subsection (f)(1)(B), by inserting "or agreement" after "contract" each place it appears.

#### TITLE II—CONSTRUCTION AUTHORIZATION

##### SEC. 201. AUTHORIZATION OF MAJOR MEDICAL FACILITY PROJECTS.

[The Secretary of Veterans Affairs may carry out the following major medical facility projects, with each project to be carried out in an amount not to exceed the amount specified for that project:

[(1) Construction of a long-term care facility in Lebanon, Pennsylvania, \$14,500,000.

[(2) Construction of a long-term care facility in Beckley, West Virginia, \$20,000,000.

##### SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

[(a) IN GENERAL.—There are authorized to be appropriated for the Secretary of Veterans Affairs for fiscal year 2004 for the Construction, Major Projects, account, a total of \$34,500,000 for the projects authorized in paragraphs (1) and (2) of section 201.

[(b) LIMITATION.—The projects authorized in section 201 may only be carried out using—

[(1) funds appropriated for fiscal year 2004 pursuant to the authorization of appropriations in subsection (a);

[(2) funds appropriated for Construction, Major Projects, for a fiscal year before fiscal

year 2004 that remain available for obligation; and

[(3) funds appropriated for Construction, Major Projects, for fiscal year 2004 for a category of activity not specific to a project.

#### TITLE III—PERSONNEL

##### SEC. 301. MODIFICATION OF AUTHORITIES ON APPOINTMENTS OF PERSONNEL IN THE VETERANS HEALTH ADMINISTRATION.

[(a) POSITIONS TREATABLE AS HYBRID STATUS POSITIONS.—Section 7401 of title 38, United States Code, is amended—

[(1) in paragraph (2), by striking "Psychologists" and all that follows through "other scientific" and inserting "Other scientific"; and

[(2) by striking paragraph (3) and inserting the following new paragraph (3):

["(3) Audiologists, speech pathologists, and audiologist-speech pathologists, biomedical engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical technologists, nuclear medicine technologists, occupational therapists, occupational therapy assistants, orthotist-prosthetists, pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technicians, therapeutic radiologic technicians, social workers, and personnel in such other positions as the Secretary designates (subject to section 7403(f)(4) of this title) for purposes of this paragraph as necessary for the medical care of veterans."].

[(b) REPORT ON PROPOSAL TO DESIGNATE ADDITIONAL POSITIONS AS HYBRID STATUS POSITIONS.—Section 7403(f) of such title is amended by adding at the end the following new paragraph:

["(4) Not later than 45 days before the date on which the Secretary proposes to designate a position as a position necessary for the medical care of veterans for which appointment may be made under section 7401(3) of this title, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the proposed designation."].

[(c) TEMPORARY, PART-TIME, AND WITHOUT COMPENSATION APPOINTMENTS.—Section 7405 of such title is amended—

[(1) in subsection (a)—

[(A) in paragraph (1), by striking subparagraphs (B) and (C) and inserting the following new subparagraphs:

["(B) Positions listed in section 7401(3) of this title.

["(C) Librarians."]; and

[(B) in paragraph (2), by striking subparagraph (B) and inserting the following new subparagraph (B):

["(B) Positions listed in section 7401(3) of this title."]; and

[(2) in subsection (c)(1), by striking "section 7401(1)" and inserting "paragraphs (1) and (3) of section 7401".

[(d) AUTHORITY FOR ADDITIONAL PAY FOR CERTAIN HEALTH CARE PROFESSIONALS.—Section 7454(b)(1) of such title is amended by striking "certified or registered" and all that follows through "occupational therapists," and inserting "individuals in positions listed in section 7401(3) of this title."].

##### SEC. 302. COVERAGE OF EMPLOYEES OF VETERANS' CANTEN SERVICE UNDER ADDITIONAL EMPLOYMENT LAWS.

[Section 7802(5) is amended by inserting before the semicolon the following: ". Employees and personnel under this clause may be considered for appointment in Department positions in the competitive service in